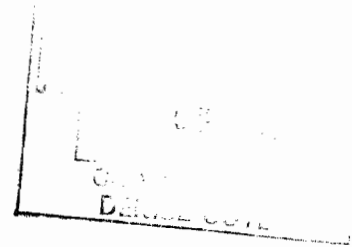


**MEMO ENDORSED**



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January 2, 2012

BY FIRST CLASS MAIL  
Honorable Denise L. Cote  
United States District Judge  
Southern District of New York  
500 Pearl Street, Room 1610  
New York, NY 10007

1/9/12

Re: Kasien Adderley v. City of New York, et al., 11 CV 6780 (DLC)

Your Honor:

I am the attorney in the Special Federal Litigation Division assigned to the defense of the above matter, in which we represent the City of New York, Officer Joseph Carrasco, Sergeant Flavio Rodriguez, Officer Catherin Melendez, Officer Cortney Allen and Officer Francis Zito. <sup>1</sup>For the reasons set forth herein, I write to inform the Court of defendants' intention to move to dismiss the instant complaint pursuant to FED. R. CIV. P. 12(b) and respectfully request that the Court endorse defendants' proposed briefing schedule, which is set forth below.

By way of background, on May 13, 2010, plaintiff brought a lawsuit in this Court against the City of New York entitled Kasien Adderley v. City of New York, et al. 10 CV 3968 (RWS) ("Adderley 1"). Plaintiff alleged that, on January 12, 2010, he was unlawfully arrested by the defendant officers named therein and that the defendants, including the City of New York had

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<sup>1</sup> The claims brought by plaintiff in this action arise from the same transaction of events brought by the plaintiffs in the following actions currently pending in the Southern District: (1) Nathaniel Parks et al. v. City of New York et al., 11-cv-6778 (DLC) (2) Mary Deyo v. City of New York et al., 11-cv-6781 (DLC) (3) Ebony Adderley et al. v. City of New York, et al., 11 CV 6782 (DLC).

violated his federal rights. Plaintiff was and is represented by Darius Wadia, Esq. in both Adderley 1 and the instant matter. The parties in Adderley 1 entered into a settlement on September, 29 2011, and plaintiff executed a General Release releasing and discharging the defendants; "the defendants' successors or assigns; and all past and present officials, employees, representatives and agents of the City of New York or any agency thereof, including, but not limited to, the New York City Police Department, from any and all claims which were or could have been alleged by me in the aforementioned action, including all claims for attorneys' fees, expenses and costs."

On or about September 27, 2011, plaintiff filed the instant complaint against the City of New York and the defendant officers. The instant complaint alleges that on January 16, 2010 (four days after the alleged incident in Adderley 1), plaintiff was unlawfully arrested and subjected to excessive force.

Defendant City respectfully requests that it be granted leave to move to dismiss the complaint based on the General Release that was executed in Adderley 1. The City submits that plaintiff's claims arising out of the events of January 16, 2010, could have been brought in the prior lawsuit. Accordingly, defendants wish to move to dismiss based on the General Release executed by plaintiff in Adderley 1.

District courts within this Circuit have held that similar releases bar claims made under these circumstances where a plaintiff enters into a settlement and then brings another separate action alleging claims that "could have been alleged" in the prior action. See, e.g. Madison Square Garden v. National Hockey League, 07 Civ. 8455 (LAP), 2008 U.S. Dist. LEXIS 80475, at \* 18-19 (S.D.N.Y. Oct. 10, 2008), Sibersky v. Borah, Goldstein, Altschuler and Schwartz, 99 Civ. 3227 (JGK), 2002 U.S. Dist. LEXIS 13218, at \*14-19 (S.D.N.Y. July 15, 2002); Willsea v. Theis, 98 Civ. 6773 (BSJ), 1999 U.S. Dist. LEXIS 22471, at \* 21-27 (S.D.N.Y. Aug. 5, 1999); Graham and Horton v. Empire Bail Bonds, 09 Civ. 1635 (JG), 2010 U.S. Dist. LEXIS 44958, at \* 6-8 (E.D.N.Y. May 7, 2010).

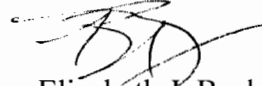
Defendants believe they have a good faith basis for their proposed motion to dismiss and are seeking the opportunity to move to dismiss at this time. In order to allow defendants time to fully prepare their moving papers, defendants respectfully request that the Court endorse the following proposed briefing schedule.

Motion papers to be served by defendant:	February 6, 2012
Opposition papers to be served by plaintiff:	March 7, 2012
Reply papers, if any, to be served by defendant:	March 15, 2012

I have conferred with plaintiff's Counsel who consents to this briefing schedule.

I thank the Court for its time and consideration of this request.

Respectfully submitted,

A handwritten signature in black ink, appearing to be "EB", written over a horizontal line.

Elizabeth J. Becker  
Assistant Corporation Counsel  
Special Federal Litigation

cc: Via First Class Mail  
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